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促进和保护所有人权——公民权利、政治权利、
经济、社会及文化权利，包括发展权

对西班牙的访问

少数群体问题特别报告员的报告* **

概要

少数群体问题特别报告员于2019年1月14日至25日访问了西班牙。他在本报告中提出了一些建议和意见，以协助政府和其他有关各方努力应对在西班牙实现少数群体人权面临的挑战。

报告中，特别报告员还提到了积极的事态发展，并侧重对少数群体特别重要的领域，如教育、使用少数群体语言、住房、就业、行政和司法服务、获得医疗和其他公共服务、少数群体参与公共生活以及打击针对少数群体的仇恨言论和其他形式的不容忍行为，包括仇视伊斯兰和反吉普赛现象。报告还包括一个关于西班牙聋人群体和手语使用情况的章节。

* 报告概要以所有正式语文分发。报告正文附于概要之后，仅以提交语文和西班牙文分发。

** 本报告逾期提交，以纳入最新信息。



Annex

Report of the Special Rapporteur on minority issues on his visit to Spain

I. Introduction

1. The Special Rapporteur on minority issues conducted, at the invitation of the Government, an official visit to Spain from 14 to 25 January 2019. He visited the capital, Madrid, and the localities of Barcelona, Bilbao, Santiago de Compostela, Seville and Vitoria-Gasteiz in the autonomous communities of Andalusia, Basque Country, Catalonia and Galicia. He consulted widely with a number of government representatives and stakeholders, both national and local, including senior government officials from the Ministry of the Presidency, Relations with the Cortes and Equality, the Ministry of Foreign Affairs, the European Union and Cooperation, the Ministry of Justice, the Ministry of the Interior, the Ministry of Education and Vocational Training, the Ministry of Labour, Migration and Social Security, the ministry responsible for territorial policy and public function, the Ministry of Culture and Sport and the Ministry of Health, Consumer Affairs and Social Welfare. He also met with the Prosecutor-General and members of his office, members of the Supreme Court, members of the Senate and of the Congress of Deputies, and the Ombudsperson and members of his teams. He was also able to meet with authorities of, as well as ombudsmen and members of their teams in, the four autonomous communities visited.

2. In addition, the Special Rapporteur consulted with a wide spectrum of civil society organizations working on issues affecting minorities. He also met with members of minority communities, such as the Roma, Asturian, Balearic, Basque, Catalan, Galician and Valencian communities, and their representatives; representatives from Muslim and Jewish minorities; migrants from Morocco; and others. Of the members of minority communities the Special Rapporteur met, members and representatives of the Roma community represented, by far, the largest proportion. This was partly because the Roma population in Spain, estimated at 750,000,¹ is estimated to be the largest population of Roma in Western Europe, but also because Roma remain among the country's most marginalized and vulnerable people, with anti-Gypsyism still widespread and deeply entrenched in social and cultural attitudes and institutional practices. He also met with defenders of minority rights, representatives of minority women and youth, as well as community workers.

3. In his 2019 annual report to the General Assembly (A/74/160), the Special Rapporteur presented a study on the concept of a minority in the United Nations system. As a result of the study, he stated that he would use and promote, as part of his mandate to promote the full and effective realization of the human rights of minorities and in carrying out his activities under the mandate, the following concept of a minority:

An ethnic, religious or linguistic minority is any group of persons which constitutes less than half of the population in the entire territory of a State whose members share common characteristics of culture, religion or language, or a combination of any of these. A person can freely belong to an ethnic, religious or linguistic minority without any requirement of citizenship, residence, official recognition or any other status (*ibid.*, para. 53).

4. Consistent with this concept, and as announced at the 2017 Forum on Minority Issues, deaf and hard-of-hearing persons who use sign languages are considered to be members of a linguistic minority. Catalan, Basque and other linguistic groups who may constitute a numerical majority in some regions of the country, but remain numerically less

¹ The absence of disaggregated data means this is a broad estimate only, with actual numbers being possibly anywhere between 500,000 and 1 million.

than half of the population in the entirety of the State, are also considered minorities pursuant to this working definition.

5. The Special Rapporteur thanks the Government of Spain for the constructive spirit and cooperation shown during the visit and its readiness to engage in an open dialogue to better understand and assess the human rights situation of minorities in the country. He also expresses his gratitude to the numerous national and international non-governmental organizations that provided information and met with him.²

II. Visit objectives

6. The objectives of the visit were to identify, in a spirit of cooperation and constructive dialogue, good practices in, and possible obstacles to, the promotion and protection of the human rights of persons belonging to national or ethnic, religious and linguistic minorities in Spain in conformity with the mandate. More specifically, the Special Rapporteur aimed at proposing possible ways of addressing existing gaps, identifying possible improvements to existing legislation, policies and practices and, in particular, identifying pathways for the effective implementation by Spain of its international obligations in relation to the human rights of minorities.

7. The overall aim was to examine existing legislation, policies and practices for the protection and promotion of the rights of persons belonging to national or ethnic, religious or linguistic minorities. The Special Rapporteur also wished to explore aspects pertaining to minorities in areas of particular significance, such as education, the use of minority languages, housing, employment, administrative and judicial services, access to health and other public services, the participation of minorities in the political process, and efforts to combat hate speech and other forms of intolerance directed at minorities, including islamophobia and anti-Gypsyism. He also wanted to get a better sense of the normative framework governing human rights in general, and particularly those of minorities, including the latest amendments to relevant legislation, acts and other mechanisms that have been established in that regard. These aspects are key to better understanding the barriers to inclusion experienced by some minority communities, and why some minorities may be distrustful of State public entities and mechanisms or have grievances in relation to what they perceive as the negation of their human rights or rejection, based on long-standing prejudices or bias.

III. General context

8. With a population of over 46 million, Spain presents a rich tapestry of languages, cultures and religions.

9. The official national Spanish language (Castilian) is spoken by almost all Spaniards either as their first or second language. In 11 of the 17 autonomous communities, Castilian is the sole official language. In the remaining six autonomous communities (Catalonia, Balearic Islands, Galicia, Basque Country, Navarra and the Valencian Community), Castilian is a co-official language along with one or more of the following languages: Catalan, Basque, Valencian, Galician and Occitan (Aranese). The minority co-official languages are spoken by almost 30 per cent of the population of Spain. Furthermore, the linguistic diversity of Spain is further enriched by the array of languages spoken by the different immigrant communities, including Arabic, Romanian, English, German, French, Russian, Portuguese and Italian. While there are no reliable data on the precise number of

² While the draft report in English was shared in advance with the Government of Spain, the Special Rapporteur was not informed at the time that a Spanish translation was to be provided with his draft report. The Special Rapporteur would like to express his appreciation for the fact that despite these circumstances the Government of Spain shared its concerns and views in relation to the present report. These comments are contained in an addendum to the report.

users of sign languages (Spanish Sign Language and Catalan Sign Language) in the country, some estimate it to be between 100,000 and 150,000.

10. A clear majority of Spaniards consider themselves to be Catholics, although in a recent study 46.8 per cent of respondents self-identified as non-practising Catholics, as compared to the 21.5 per cent of respondents who self-identified as practising Catholics.³ Many people who are minorities in terms of religion or belief self-identify as atheist (12.5 per cent) or agnostic (7.3 per cent). Other religious minorities represent much smaller proportions of the Spanish population. Recent waves of immigration have led to an increasing number of Muslims and non-Catholic Christians, especially Protestants, with Islam constituting the country's second-largest religious grouping. It is suggested that almost 2 million Muslims may be living in Spain, making up about 4 per cent of the country's total population. Many are immigrants from North African countries; almost half are Spanish citizens. Jews in Spain comprise less than 0.2 per cent of the population, or some 40,000 people.

IV. Legal and institutional framework

A. International framework

11. Spain is a party to all core international human rights treaties, with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It has a comprehensive legal framework for the protection of human rights and a well-developed institutional architecture. Furthermore, Spain has been a party to the Council of Europe's Framework Convention for the Protection of National Minorities since 1 September 1995.

12. The Special Rapporteur notes that during the second cycle of the universal periodic review, Spain accepted a number of recommendations with regard to measures combating racism, racial discrimination, xenophobia and related forms of intolerance, ethnic and racial profiling by law enforcement, and discrimination against minorities in all areas, including in the field of employment, education and housing, as well as recommendations on the human rights situation and social inclusion of Roma, on protection and promotion of the rights of religious minorities, and on access to justice and to effective remedies by persons belonging to minorities (see A/HRC/29/8 and Add.1).

B. Constitutional and legislative framework

13. Non-discrimination is enshrined in article 14 of the Constitution, which stipulates that Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.

14. Protection is guaranteed for a large number of human rights under Title I of the Constitution, including freedom of religion or belief (art. 16), freedom of expression (art. 20), freedoms of assembly and of association (arts. 21–22), access to justice (art. 24), the right to education (art. 27), the right to adequate housing (art. 47) and guarantees for the rights of persons with disabilities (art. 49).

15. Law No. 62/2003 of 30 December 2003 transposed into national law Directives No. 2000/43 and No. 2000/78 of the Council of the European Union on non-discrimination. It covers all grounds of discrimination and includes definitions for both direct and indirect discrimination, although in some cases one or more grounds are not specifically listed in an individual provision.

³ Centre for Sociological Research, "Macrobarómetro de octubre 2019. Preelectoral elecciones generales 2019", study No. 3263 (October 2019), p. 38.

16. In Organic Law No. 4/2000 of 11 January 2000 on the rights and freedoms of aliens in Spain and their social integration, discrimination is defined as any act against a foreigner on the basis of race, colour, descent, national or ethnic origin or religious beliefs and practices.

17. While all of the above-mentioned laws may, when broadly interpreted, cover all grounds of discrimination, they do not specifically include language – an omission that is potentially inconsistent with a number of international treaty obligations for which this characteristic is fundamental.

18. Other important legislative developments include the adoption of Law No. 27/2007 of 23 October 2007, in which sign languages and speech aid systems were recognized, and Royal Legislative Decree No. 1/2013 of 29 November 2013, by which the general law on the rights of persons with disabilities and their social inclusion was adopted.⁴

C. Institutional framework

19. Law No. 62/2003, as amended by Law No. 15/2014 of 16 September of 2014 on the rationalization of the public sector and other measures of administrative reform, provided for the establishment of the Council for the Elimination of Racial or Ethnic Discrimination. The Council became operational on 28 October 2009.⁵ It is administratively attached to the Ministry of Presidency, Relations with the Cortes and Equality through the Institute for Women and Equal Opportunities, and is a collegiate body that includes representatives of national, regional and local administrations, social partners and a number of civil society organizations. Operating independently, it provides assistance to victims of discrimination, conducts research and publishes reports, offers mediation and files complaints with the Ombudsperson, public authorities, inspection services and consumer organizations. The Council helped in the establishment of a network to provide assistance for victims of racial or ethnic discrimination; support services are provided by eight specialized organizations with offices in different regions.⁶ However, there are concerns about the Council's ability to launch investigations in discrimination cases and to initiate and participate in court proceedings.⁷

20. There are specialized hate-crime units in provincial prosecutorial offices in the country, and an inter-institutional memorandum of understanding among national public administration institutions, including civil society organizations as observers. Furthermore, the Observatory on Racism and Xenophobia has developed and implemented training programmes for government officials, including law enforcement, and specific programmes on non-discrimination in areas such as health, education and the Internet.

21. The Office of the Ombudsperson was established through Organic Law No. 3/1981 of 6 April 1981, with the mandate to monitor the respect and promotion of human rights within the General State Administration (national State administrative services) and the regional and local administrations, and to launch investigations both *ex officio* and on the basis of received complaints. The ombudspersons of the autonomous communities also contribute to the human rights agenda at the regional and local levels.

⁴ European Commission, *Country Report: Non-Discrimination – Spain 2019* (Luxembourg, European Union), p. 6. Available at www.equalitylaw.eu/downloads/4963-spain-country-report-non-discrimination-2019-pdf-1-32-mb.

⁵ *Ibid.*, p. 9.

⁶ See <https://asistenciavictimasdiscriminacion.org/wp-content/uploads/2013/10/TRIPTICO-Folleto-Servicio-de-atencio%CC%81n-INGLES-web1.pdf>.

⁷ European Commission against Racism and Intolerance, “ECRI report on Spain (fifth monitoring cycle)” (27 February 2018), p. 15.

22. Finally, with regard to the Roma associative movement, the State council of the Roma people was established in 2005 through Royal Decree No. 891/2005 of 22 July 2005,⁸ as an interministerial advisory body attached to the Ministry of Health, Consumer Affairs and Social Welfare, with the participation of a significant number of Roma organizations and associations. Its main goals are to develop and strengthen collaboration with the State administration, particularly in the area of social welfare policies, and to increase awareness of the human rights of Roma in Spain and strengthen the capacity for the protection and promotion of those rights. Similar advisory bodies were established at the regional level, for example in Catalonia, Basque Country and Extremadura.

V. Positive steps and development

23. The enormous strides made by Spain in the field of human rights since it transitioned to democracy in 1977/78 are not always fully appreciated or sufficiently acknowledged. The country's more than 40 years of democracy has led to a modern and dynamic State that is fully engaged in European and international institutions, with an effective government, an independent judiciary and forms of autonomy that respond in part to the reality of a State with a rich cultural diversity. Spain is not a federation, but a highly decentralized unitary State. The 17 autonomous communities have greatly contributed to the more effective political participation of the country's largest minorities, such as the Basque, Catalan and Galician minorities, and have provided means for recognizing and implementing the rights of such minorities in areas such as language and culture. This has been a defining development in the country's path to a democracy that is more inclusive and embraces its historical diversity and the reality of its rich tapestry of languages, cultures and religions.

24. Spain has made many legislative, institutional and policy strides in areas such as human rights protection, the combating of gender violence, and the inclusion of Roma communities, although many of the initiatives in these areas were hit hard during the severe financial crisis of 2008–2014. The operational plans established to implement the National Roma Integration Strategy in Spain 2012–2020, along with numerous other measures, have undoubtedly contributed to a decrease in illiteracy, an increase in school attendance and other positive and measurable outcomes. Spain recognized its two main sign languages in 2007 and has taken steps to ensure the use of sign language in a number of areas, although its recognition and support tends to focus on Spanish Sign Language and not Catalan Sign Language. There have been innovative initiatives to better assist and integrate the increasing numbers of migrants and foreigners, such as Moroccans and Romanians, arriving and staying in Spain, including some provision of information and assistance in their languages.

25. In 2006, the Government incorporated into its educational system a course entitled "Education for citizenship and human rights", in accordance with recommendation Rec(2002)12 on education for democratic citizenship, issued by the Committee of Ministers of the Council of Europe to member States.

26. Spain must be commended for these and other measures. However, human rights issues in relation to minorities at times feel like an "unfinished story". These include continuing challenges or lacunae in a number of cross-cutting matters, such as the language of education, as well as issues specific to long-established minorities or to more recent arrivals regarding the nature of their rights as minorities.

⁸ See www.msrebs.gob.es/ssi/familiasInfancia/PoblacionGitana/docs/tripticos/TripticoCastellano.pdf.

VI. Areas of concern and areas for further improvement in the recognition, protection and implementation of the human rights of minorities

27. The Government has taken significant steps in recent years towards a fairly comprehensive strategy and initiatives to tackle discrimination, hate speech and hate crimes against minorities and other vulnerable groups. The Special Rapporteur urges, however, the Government to undertake additional steps, improvements and changes in areas where further efforts may be needed to ensure the country's full compliance with its international human rights obligations in relation to minorities. Furthermore, he notes that some unfortunate developments need to be addressed. The elimination of human rights and citizenship education as a distinct course in schools, and its replacement with a more general class on civic and constitutional education as an interdisciplinary topic, in the academic year 2014/15, was not particularly helpful in terms of promoting an inclusive, tolerant society through education, and should be reconsidered.

A. Disaggregated data

28. Spain, along with some other countries, does not systematically collect disaggregated data on its population's languages, cultures or religion, but does collect population data regarding gender and nationality (distinguishing between citizens of Spain and foreigners). This approach does not result in the precise information on the population that is necessary to design better-targeted, effective and evidenced-based government policies and programmes. As the Special Rapporteur has maintained on previous country missions, such data allows Governments to plan programmes so as to reach those most in need. This is particularly true with respect to measuring the impact that policies and programmes have on those who are most vulnerable and marginalized, including minorities.

29. This approach seems to be aimed mainly at protecting personal data and grounded in misplaced privacy considerations. Personal information can be removed from census data and other useful disaggregated data collections, as is done for the data collected on gender in many other countries. As some international and European organizations have noted, a non-disaggregated approach makes it particularly difficult to effectively identify those experiencing discrimination and to adequately build evidence-based policies that guarantee the provision of access to a variety of services and full compliance with human rights, even basic rights such as education. Authorities need to pursue and expand their efforts to improve practices for obtaining reliable data on equality, disaggregated by ethnic or national origin, language, religion and culture, in full respect of the relevant international data protection standards, in order to increase the effectiveness of measures designed to promote the full and effective equality of persons belonging to national minorities.

30. For example, clear and objective assessments of the impact of the different educational models using immersion, bilingual or multilingual teaching that are implemented throughout Spain would be greatly beneficial to dispel inaccurate and unhelpful claims regarding the pedagogical impact of those models on academic performance generally and regarding competence in the national and co-official languages more specifically. It appears that the evaluation institute under the Ministry of Education stopped collecting such empirical evidence in 2010.

31. The view of the Special Rapporteur, and of most international observers, is that disaggregated data is indispensable to ensure that positive measures to address human rights issues, including those of minorities, are effective. It was made clear to him, particularly by members of civil society, that the lack of data collection is viewed with frustration and as preventing concrete progress on human rights issues involving Roma, people of African descent, migrants and others.

32. The Special Rapporteur also recommends that, in the field of education, the evaluation institute under the Ministry of Education resume the collection of data on levels of competency in the acquisition of fluency in Castilian and co-official languages throughout the country.

B. Law enforcement and judicial authorities

33. A number of minority representatives from particularly vulnerable or marginalized groups, such as the Roma community, people of African descent and migrants, vividly expressed to the Special Rapporteur during the mission how they remained distrustful and at times fearful of police forces and even the judiciary. While for a few migrants this may be connected to their precarious situation, if their stay in the country is not legal, others shared stories of ethnic profiling, harassment, ridicule and even violence from forces and officials who are supposed to protect. While ethnic profiling is not condoned officially by State authorities, it would seem that its practice has unfortunately not entirely disappeared. The Special Rapporteur was in this respect also informed that there continue to be large numbers of complaints to the Ombudsperson alleging excessive stop-and-search checks.

34. Although praiseworthy steps towards eliminating ethnic profiling by the police have been taken, particularly in the training of national police, more such programmes need to be set in motion to more effectively and specifically address the phenomenon, which was described as endemic by the Working Group of Experts on People of African Descent in the 2018 report on its mission to Spain (A/HRC/39/69/Add.2, para. 19). The Working Group noted how provisions in the Law on the Security of Citizens, which imposed large fines for filming law enforcement agents and reversing the burden of proof, had had the perverse effect of people of African descent – and it should be added this is also true of minorities in general – underreporting discriminatory acts by law enforcement officials, and had also led to failure to investigate and prosecute perpetrators of crimes (ibid., para. 21). This was raised in some of the Special Rapporteur's meetings with representatives of migrant communities as a significant factor contributing to distrust of the police and the judiciary: minorities felt that they were unable to present their allegations, since filming such incidents is illegal, and that they had to assume the burden of proof for any allegation of police misbehaviour. The Special Rapporteur was informed, however, by the Ministry of the Interior that Organic Law No. 4/2015 of 30 March 2015, on protection of public safety, was aimed at guaranteeing that the principles of proportionality and non-discrimination would be strictly respected in the identification of people for reasons of racial or ethnic or other personal characteristics. Allegations of racial profiling nevertheless persist. In relation to penalties for filming law enforcement agents, the Special Rapporteur was advised that the State Secretariat for Security had issued, in October 2018, strict instructions that filming or taking a photo of law enforcement officials was not an infraction as such. The instructions also clarify that after all physical searches, law enforcement agents must give the person searched a written statement including the reasons for the search, his or her identification information and a description of the incident. While the Special Rapporteur commends Spanish authorities for these clarifications, he notes that the legislation still in force could be seen to contradict the proposed strict interpretation, and that the practice of law enforcement agents in the field in 2019 did not seem to fully comply with the instructions.

35. The Special Rapporteur was informed that a reporting formula that had been developed would require law enforcement officers to identify potential situations of ethnic profiling in their interactions with members of the public. This has apparently been used systematically only by the Madrid municipal police, although there are proposals for its expansion.

C. Human rights framework

36. Spain has, broadly speaking, a comprehensive legal framework for the protection of human rights. There are, however, some omissions in its well-developed and fairly extensive human rights architecture that may have a negative impact on minorities in particular. Article 14 of the Constitution and article 23 of Organic Act No. 4/2000, both dealing with equality and non-discrimination, contain a limited number of grounds for prohibited distinctions that do not include language – an omission that is potentially inconsistent with a number of international treaty obligations for which this characteristic is fundamental. While article 13, paragraph 1, of the Constitution does indicate that non-

citizens are to enjoy the public freedoms enshrined in title I of the Constitution in accordance with the law and treaties, the use of the term “Spaniards” for those entitled to claim the right to equality without discrimination in article 14 is problematic, since it excludes non-citizens. Criticisms of the restricted list of prohibited grounds of discrimination in legislation and the Constitution have been raised previously by other United Nations special procedure mandate holders.⁹ It should be noted that article 14 excludes language and other prohibited grounds of distinction commonly found in United Nations human rights treaties. This could be of concern in relation to possible discriminatory practices against linguistic minorities, including members of the deaf community who use Spanish Sign Language or Catalan Sign Language.

37. It has been suggested by Spanish officials that the above-mentioned provisions are open-ended, and that judicial and other authorities may therefore interpret them liberally in a manner consistent with the international obligations of Spain. No data were presented, however, to indicate whether that was systematically or necessarily the case. Thus, linguistic minorities can be susceptible to the vagaries of local or individual interpretation and application.

38. The Special Rapporteur recommends that the Government review and amend legislation and other provisions dealing with the prohibition of discrimination to ensure that any list of grounds contain at least those routinely contained in major international human rights treaties, namely, any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

D. Racism, xenophobia and hate speech

39. Another important area of concern for minorities is protection against hate speech and incitement to violence. The Government has made considerable progress in addressing those issues and must be commended for the establishment of specialized units to address hate crime, within the offices of provincial public prosecutors, and of a national special prosecutor to oversee the coordination of anti-discrimination activities. Other noteworthy protections, especially in terms of legislation, include article 510 of the Criminal Code, which criminalizes public incitement to violence, hatred or discrimination and the acts of those who, with knowledge of its falseness or reckless disregard for the truth, distribute defamatory information, which can often target minorities and other vulnerable groups. Following the Special Rapporteur’s mission to Spain, a circular clarified how this provision should be interpreted, helping to circumscribe more clearly its application, particularly to protect minorities.¹⁰ Article 170 of the Criminal Code provides for greater penalties if threats are intended to frighten members of a minority and other identified groups. Article 22 of the Criminal Code identifies as an aggravating circumstance an intent to commit an offence on the grounds of racism, antisemitism, the religion or beliefs of the victim or his or her ethnicity, citizenship, gender, sexual orientation or gender identity.

40. While welcoming noteworthy initiatives such as that of the government-supported Observatory on Racism and Xenophobia, which collects information on hate crime and hate speech and conducts training programmes for educators, law enforcement officials and others, the Special Rapporteur notes that Spain, along with San Marino, are the only two members of the Council of Europe not to have an independent equality body. The Council for the Elimination of Racial or Ethnic Discrimination is still not an independent entity, engages in few activities and has few resources at its disposal. Proposals to rectify this situation were under discussion in 2019.

⁹ For example, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. See A/HRC/23/56/Add.2.

¹⁰ Attorney General’s Office, circular No. 7/2019 of 14 May. Available at www.boe.es/diario_boe/txt.php?id=BOE-A-2019-7771 (in Spanish).

41. The Special Rapporteur was informed that minorities such as Roma, people of African Descent, migrants, and religious minorities such as Muslims report that they sense that they remain the main targets and victims of intolerance expressed in hate speech. In addition, connected to events that took place in Catalonia in 2017, the Special Rapporteur received reports of an apparent increase in hate speech, vilification, vandalism, physical threats and even assaults against members of the Catalan minority and, to a lesser degree, other national minorities. Some reports suggest that authorities are not sufficiently responding to or prosecuting these allegations, thus indirectly contributing to an atmosphere of increasing intolerance against minorities and of nationalistic vitriol. While the Special Rapporteur is not able to comment on the veracity on the allegations, he notes that, among members of those minorities, as among members of migrant communities and people of African descent, there is significant distrust of the police and even the judiciary.

42. Spain has developed a number of policies and approaches to these challenges that must be commended, including proposals for a more comprehensive organic law on discrimination and for a comprehensive strategy against racism, racial discrimination, xenophobia and other related intolerance, as well as institutional structures at the national, provincial and local levels, including the Council for the Elimination of Racial or Ethnic Discrimination and others referred to above. However, concerns were expressed that many of those initiatives were either developed without direct input or representation from the minorities affected, or still do not necessarily result in concrete implementation action. Issues such as the perpetuation of negative stereotypes of Roma in news items in which Roma are portrayed in a negative light, or in criminal cases where a defendant's ethnic origin is regularly revealed when a Roma is involved, are recurrent and largely unaddressed by Spanish authorities despite the many initiatives and policies currently in place. Difficult challenges also remain regarding the dissemination of racist, xenophobic and antisemitic messages on the Internet and through social media networks. Such challenges need to be addressed more forcefully, both in terms of practice and in terms of what is permitted under current legislative and regulatory schemes. Particular attention should also be paid to growing signs of intolerance and hate speech targeting other minorities in light of the events of 2017.

43. The Special Rapporteur recommends that a national review be conducted and strategic plan be adopted to combat all forms of racism, xenophobia and intolerance. It should be a priority that alleged cases of hate speech committed on the Internet and other media be more effectively investigated, prosecuted and sanctioned. As part of such an approach, a comprehensive review of school textbooks to incorporate more inclusive and positive portrayals of the country's diversity, as well as awareness-raising campaigns and other activities for the general public celebrating its rich association with many cultures, languages and religions and acknowledging them as integral parts of modern Spanish society, should be considered. In addition, the Special Rapporteur recommends that the Government carry out high-visibility media and public awareness campaigns to continue its encouragement of an inclusive society comprised of many different cultures, religions and languages in order to try to counter an apparent rise in hate speech and intolerance against minorities.

VII. Specific issues

A. Discrimination against Roma

44. Many Roma are highly integrated in parts of Spain, but too many still face significant socioeconomic disadvantages and even exclusion, as well as discrimination and prejudice in areas such as education, housing and employment. It was, for example, perplexing to hear that for the single most important area of economic activity for Roma, street trade, regulations varied from locality to locality, and that Roma could be subjected to numerous vagaries of application or treatment that were often arbitrary and dismissive – even discriminatory. It would seem sensible to take a nationwide approach so that this traditional and central economic activity can be carried out more effectively and be a positive step towards a more responsive and inclusive acknowledgment of this dimension

of Roma identity. Another area of concern is that Roma have almost no representation in elected political bodies at the national, regional or municipal levels.

45. Two issues in particular were often raised during the mission and need to be addressed: the continuing existence of segregated schools and the need to combat negative stereotyping in a more proactive way and with a much more positive image of the contributions of Roma people. The Special Rapporteur was impressed by the Roma parents and activists he met in Seville, who were eloquent in expressing their firm belief in the importance of quality education for their children, by Roma women university graduates, who serve as powerful role models for future generations, by the committed teachers and other officials of the government of Andalusia working tirelessly towards a more inclusive society, and by others who emphasized how necessary it was to challenge and take steps to displace the negative stereotyping that kept dragging down members of the Roma community.

46. Despite uncontested and commendable efforts and progress in the field of education in terms of increased literacy rates in recent years, about 64 per cent of Roma children still do not complete compulsory secondary education, whereas for the general population this figure is around 13 per cent. The Special Rapporteur was informed that although not condoned by Spanish authorities, in public schools in some parts of the country, such as in the region of Seville, as many as 90 per cent of the students are Roma, partly as a result of non-Roma parents sending their own children to other schools (which they are legally allowed to do), instead of having them be seated next to Roma. The significant Roma population in the immediate area of the schools in and of itself did not explain the high concentration of Roma students.

47. More efforts are necessary to tackle de facto instances of educational segregation more effectively. Despite the National Roma Integration Strategy in Spain 2012–2020, which includes a specific line of action for developing measures to avoid the concentration of Roma pupils, there is neither a national study to detect the extent of the phenomenon nor a plan to combat it.

48. The Special Rapporteur therefore recommends that a new national Roma integration strategy be adopted and that it include as a matter of priority more detailed measures, including steps for implementation, to avoid and reduce the concentration of Roma students in de facto segregated schools, and provisions for conducting a review to identify the establishments in which this is still occurring.

49. The Special Rapporteur reaffirms that specific strategies and measures are needed to combat negative stereotyping of members of the Roma minority with more positive images. Also needed are initiatives that raise the general public's awareness of the rich and numerous contributions of Roma people throughout Spanish history. The Special Rapporteur highly recommends that a national campaign be implemented to displace the negative stereotyping that continues to drag down members of this minority community. Such initiatives should be an essential part of an overall national strategy for combating the apparent rise of intolerance and hate speech against this and other minorities that has been observed in parts of the country in recent years.

B. Language rights

50. The handbook entitled "Language rights of linguistic minorities: a practical guide", published in 2017 under the mandate of the Special Rapporteur on minority issues, emphasizes the central role and importance of language for many minorities, and the State obligations in that regard under various United Nations treaties and other instruments. The competence of autonomous communities in the fields of education, social services and other areas has led to the adoption of a variety of models and practices in the use of different languages in education and in access to public services, which reflect diverse contexts, populations and expectations.

51. One concern encountered on a number of occasions in meetings with civil society organizations and others from the Balearic Islands, the Basque Country, Catalonia, Galicia

and the Valencian Community was the feeling, particularly in the areas of education, law enforcement and the judiciary, that there was a disconnect between the claimed status of co-official languages and the extent of their actual use and of the implementation of legislation. For example, it was pointed out that judges and law enforcement officials, such as the national police, are not subject to any requirement of knowledge of a co-official language even when based in an autonomous community. It has been suggested that this leads to a significant number of grievances and to frustration in some of those communities, and to unfortunate misunderstandings and even denial of or discrimination in access to public services.

52. As a general proposition, the human rights obligations of States regarding the use of minority and other languages in public services, including in public education, are based on the prohibition of discrimination on the ground of language. As outlined in the above-mentioned handbook, where State authorities can practicably use a particular minority language in a specific territory, and in the absence of any reasonable basis to exclude such use of a minority language, it would be discriminatory in international law to forbid the use of a minority language in administrative, judicial and other public services.¹¹

53. Spain made huge strides from the 1970s, as it moved towards a full-fledged democracy, in removing the previously existing prohibitions on the use of minority languages by State authorities, including the prohibition of personal names in non-Castilian languages. However, the Special Rapporteur was advised in the areas inhabited mainly by linguistic minorities in the Basque Country, Galicia, Navarre, Valencian Community, Catalonia, the Balearic Islands and others that in recent years judicial interpretation and other developments have generally led to increasing obstacles to the use of minority languages in a range of public services.

54. Some of the issues raised include the weak use of the Basque language in areas of Navarre having large concentrations of Basque speakers. While existing legislation recognizes the co-official status of Basque with Castilian in the Basque-speaking regions of Navarre and the mixed-language zones, the use of the Basque language appears not to be sufficiently guaranteed or implemented, according to members of this linguistic minority. In Navarre, as in other parts of the country, judicial pronouncements have in recent years limited the permissible use of minority languages. This includes an October 2019 pronouncement of the High Court of Justice of Navarre that overturned provisions requiring bilingual public signage and notices in mixed-language and non-Basque-speaking areas, and setting aside any consideration of Basque as a merit in job positions unless absolutely necessary. Article 231 of the organic law on the judiciary has been identified as one of the obstacles to the full implementation by Spain of its human rights obligations in relation to the use of co-official minority languages, since it stipulates that in judicial procedures, judges, magistrates, prosecutors, clerks and other officers are to use Castilian, and that co-official minority languages will be allowed only if no party objects. In most cases, this has led to criminal, civil and administrative judicial authorities proceeding officially in Castilian. Furthermore, members of the public who may wish to use a minority language in such proceedings cannot be guaranteed that the magistrate or other officials would be directly able to understand the minority language if it were to be used. While in theory individuals may still use a minority co-official language even when Castilian is the language used for the proceedings, consistent reports in different parts of the country indicate that individuals are simply told to comply with the chosen use of the national language. In the view of the Special Rapporteur, this blanket obstacle to the use of a minority co-official language gives rise to concerns regarding compliance by Spain with its human rights obligations, particularly the prohibition of discrimination, as outlined in the handbook on language rights of linguistic minorities and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

¹¹ Special Rapporteur on minority issues, “Language rights of linguistic minorities: a practical guide” (Geneva, 2017), p. 23.

55. In light of what appear to be consistent impediments to the use of co-official languages that could be deemed to be discriminatory in some autonomous communities, the Special Rapporteur invites the Government to consider modifying article 231 of the organic law on the judiciary so as to guarantee a more directly exercisable right to use minority co-official languages jointly with Castilian, so that the proceedings before criminal, civil and administrative judicial authorities can effectively be held in both co-official languages.

56. The Special Rapporteur was made aware of numerous other issues regarding the use of minority languages in autonomous communities. In Galicia, legislation and a number of initiatives promoting the visibility and position of Galician seem impressive initially, and the authorities of Galicia must be commended in that regard. However, many appear not to be implemented effectively, and the Special Rapporteur received consistent reports of members of the Galician-speaking minority being unable to use their own language, despite the apparent right to do so with public authorities in the region. Similar allegations were heard in other autonomous communities, such as Navarre. In addition, persons belonging to linguistic minorities who live outside of autonomous communities where their languages are co-official find it particularly difficult to use their language in most areas of public life.

57. The issue of the language of education, and striking the appropriate balance, is particularly sensitive and challenging in Spain. This is partly due to recent judicial pronouncements that have emphasized the prominent constitutional position of the sole national official language, which, in accordance with article 3 of the Constitution, all Spaniards have the duty to know and the right to use, and what they may imply in relation to the right to be taught in Castilian as opposed to in co-official languages. It is also partly because educational policies, including those regarding the medium of instruction, fall within the competence of the country's constituent communities, with 6 of the 17 autonomous communities having co-official languages in addition to Castilian. This multiplicity of languages in different regions has led to various educational approaches, leading to some claims that co-official minority languages are not being used to the extent they ought to be in education, and related counterclaims, and even claims from some parties that the use of minority languages in education may, in certain contexts, contravene the Constitution. In 2015, for example, the Supreme Court of Spain ruled against the Catalan school model of immersion, indicating that schools in Catalonia were to teach at least 25 per cent of their subjects in Castilian, including at least one core subject.

58. The Catalan school system is based on a linguistic immersion approach for all children that privileges Catalan as the main, but not exclusive, language of instruction; it is claimed that all children in the system effectively acquire fluency both co-official languages. It has been suggested that if there were less exposure to Catalan, many children from Castilian-speaking environments would not learn Catalan properly, as it is a minority language, whereas Castilian remains a majority language in the country and is therefore guaranteed daily exposure and even prestige. The United Nations Educational, Scientific and Cultural Organization (UNESCO) and other international organizations have lauded the Catalan immersion approach.

59. The Special Rapporteur has received numerous reports from minority groups asserting two other main areas of concern in education. The autonomous communities of Catalonia and of the Balearic Islands are concerned that there has been a gradual erosion of existing educational approaches that had, until now, it is claimed, offered non-segregated immersion models that were largely successful in achieving effective bilingualism among most children. In some other autonomous communities, such as Galicia and Navarre, it was argued that existing educational schemes were insufficient to effectively guarantee that minority children could be educated in the co-official minority language.

60. Another point of concern for the Special Rapporteur was the absence of current empirical data on the impact of different educational models using immersion, bilingual or multilingual teaching methods. Such data had been collected throughout Spain before 2010. This lack of data collection may be feeding feelings that State authorities may not be fully meeting their obligations regarding the rights of minorities in the area of the use of language in education. It also may be creating concern among parents of non-minority pupils who feel they may be subjected to educational regimes that are harmful to their children's academic achievement.

61. The Special Rapporteur reiterates that, in order to dispel such concerns and to properly assess the impact of various educational models using different co-official and minority languages, the Government of Spain should reinstate the collection of national data on the impact of different educational models.

62. The 2017 handbook on language rights of linguistic minorities highlighted the importance of providing education in a minority language. Where practicable, minority languages must be used as medium of instruction following general principles of proportionality. No one particular educational model is ideal or could possibly be appropriate for all of the different contexts of local populations or of the States involved. Nevertheless, the handbook does set out general principles, including the following:

Where there is a sufficiently high numerical demand, public education services must be provided in a minority language to the appropriate degree, broadly following a proportional approach. This includes all levels of public education from kindergarten to university. If demand, the concentration of speakers or other factors make this not feasible, state authorities should as far as practicable at least ensure availability of minority language teaching. In addition, all children must have an opportunity to learn the official language(s).¹²

63. The handbook also makes clear that:

Language differences must not be used as an excuse to segregate students along ethnic or racial lines in education. When open to all who share the same language, regardless of ethnicity or race, the use of minority languages as a medium of instruction is neither discriminatory nor impermissible segregation.

To promote tolerance and inclusion, all students should learn about each other: minorities must not be prevented from understanding the culture and language of the national community as a whole or from participating in its activities, and the majority must also be given similar opportunities in relation to minority cultures and languages.¹³

64. Each of the autonomous communities has in place different educational approaches and models for the use of minority languages as a medium of instruction or their inclusion as subject matter. Many autonomous communities implement more than one model within their own jurisdiction. It is beyond the scope of the present report to detail each of those approaches to determine which may or may not be consistent with the international obligations of Spain vis-à-vis the human rights of minorities. The Special Rapporteur reiterates, however, that regardless of the model or approach in place, members of linguistic minorities have the right to the use of their language in education to the extent that such use is reasonable and proportional, so that children may, wherever practical, effectively acquire fluency in their own language as well as in a State's national language.

65. In light of the commendations that Catalonia has received from UNESCO and other international commentators for its highly successful immersion model, the Special Rapporteur recommends that Spanish authorities, including at the level of autonomous communities, review any measure that might reduce the proportion of teaching that is carried out in the Catalan minority language in public schools.

66. The Special Rapporteur also recommends that Spanish authorities ensure that appropriate resources, teachers, support personnel and infrastructure are in place so that children in autonomous communities with significant populations belonging to linguistic minorities have the possibility of studying in their own languages. Despite the existence, in many cases, of legislation recognizing such a right, in practice individuals in Navarre, the Balearic Islands, the Valencian Community and Galicia have indicated that they face practical obstacles or other limitations in exercising that right. For example, it was brought to the Special Rapporteur's attention that some public schools in the Balearic Islands had

¹² Special Rapporteur on minority issues, "Language rights", p. 16.

¹³ *Ibid.*, p. 19.

opted for a trilingual model (Castilian, Catalan and English), which significantly reduced teaching in the co-official minority language.

C. Participation in public life

67. The Special Rapporteur joins colleagues who have already expressed grave concerns about restrictions placed on, criminal charges against, and the subsequent trials and sentences of political figures and protesters belonging to the Catalan minority. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression issued a statement on 6 April 2018 in which he urged Spanish authorities to refrain from pursuing the criminal charge of rebellion against those political figures and protesters.¹⁴ He indicated that such charges for acts that did not involve violence or incitement to violence could interfere with the freedom of expression, including peaceful public protest and dissent. The Special Rapporteur on minority issues shares those concerns in terms of the signal this gives to minorities more generally. Non-violent political dissent by minorities should not give rise, as the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression also points out, to criminal charges, since such restrictions should only be imposed where they are strictly necessary and proportionate. The Special Rapporteur on minority issues points out that all 12 people convicted for long periods of imprisonment in connection with the October 2017 referendum are members of the Catalan minority.

68. The Special Rapporteur on minority issues also agrees with the recent conclusions drawn by the Working Group on Arbitrary Detention in its opinion No. 6/2019, concerning the extended detention of two members of civil society organizations (former president of the Catalan National Assembly, Jordi Sánchez, and president of Òmnium Cultural, Jordi Cuixart), and the former vice-president of Catalonia, Oriol Junqueras, charged with sedition for a failed bid to obtain Catalanian independence from Spain in 2017. He notes the Working Group's conviction that the purpose of the criminal charges brought against those individuals was to intimidate them because of their political views.¹⁵ He also notes the similar conclusions of numerous international organizations, such as Amnesty International, Human Rights Watch and the International Commission of Jurists, in relation to the 2017 events, the subsequent prosecution of members of the government of Catalonia and members of civil society, and the use of excessive force by the police to break up peaceful activities.

69. The Special Rapporteur observes that these matters arose from the expression of the views of the Catalan minority – and others – in relation to their continued participation and status in the polity of Spain. He also learned of allegations in Catalonia that hate speech against Catalans as a minority had increasingly been appearing in social and other media as a result of the recent events. Politicians and others outside the region had begun to paint Catalans as a threat and traitors who had to be dealt with severely, at times using violent language.

70. In the view of the Special Rapporteur, alongside the previous stated observations of his colleagues and other organizations, Spain has legal obligations to protect the human rights of minorities, including the Catalan minority, especially in relation to: freedom of expression, including political expression, in accordance with article 19 of the International Covenant on Civil and Political Rights; freedom of peaceful assembly and of association, in accordance with article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and articles 21 and 22 of the Covenant; and participation in public life, in accordance with article 25 of the Covenant.

¹⁴ Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22928&LangID=E.

¹⁵ Opinion No. 6/2019, para. 119.

D. Deaf community and the use of sign languages

71. Members of the Spanish Sign Language and Catalan Sign Language minorities have seen considerable progress in Spain since the adoption of legislation in 2007 (Law No. 27/2007) that provides for the legal basis and conditions for using sign language in State institutions and services. Attitudes have also shifted: once simply considered as a tool to compensate for a disability, sign language has begun to be acknowledged as a fully functioning language. Current national legislation, however, continues to reflect a “sign language as tool” rather than a “language as right” stance.

72. A shift in the legislation would be welcome since, despite the 2007 law, there is still reluctance in some schools to set aside resources for providing children who are deaf with teaching in sign language, and implementation of the law itself still appears weak.

73. The Special Rapporteur recommends legislative changes so as to ensure that Spanish Sign Language and Catalan Sign Language are more clearly acknowledged as full-fledged languages, and also recommends that Spanish authorities increase resources to increase the availability of bilingual educational facilities for deaf children and public services in both those languages. He also urges the Government to recognize both as official languages at the national level.

VII. Conclusion and recommendations

74. The Special Rapporteur on minority issues commends the Government of Spain for the enormous strides it has made in its path towards a more inclusive and tolerant society since the 1970s. He congratulates Spanish authorities for the strides they have made to accommodate and reflect the linguistic, religious and ethnic diversity of the country, and for their efforts to better recognize the invaluable contributions made by all its component populations, including Roma. Nevertheless, there remains room for improvement, particularly in addressing the serious obstacles that migrants and people of African descent continue to face, as well as what appears to be a rise in xenophobic nationalism targeting those and other minorities, including historical communities such as the Catalans.

75. The following recommendations are intended to assist Spain in its efforts to better address minority issues and more fully comply with its obligations in relation to the human rights of minorities.

76. The Government should reconsider adopting a comprehensive law against racism, racial discrimination, xenophobia and related intolerance, including hate speech published on the Internet and in other media. In particular, the Special Rapporteur recommends that the Government take more action to counter the rise of hate speech, xenophobic and misogynistic discourse and the scapegoating of minorities among politicians and political leaders.

77. The Government should review and amend legislation and other provisions dealing with the prohibition of discrimination so that they reflect the grounds contained in major international human rights treaties, namely, any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

78. The Special Rapporteur recommends that the governments of Spain and of the autonomous communities conduct a comprehensive review of school textbooks to incorporate more inclusive and positive portrayals of the country’s diversity, as well as awareness-raising campaigns and other activities for the general public celebrating the country’s rich association with many cultures, languages and religions and acknowledging them as integral parts of modern Spanish society. In addition, the Government should carry out high-visibility media and public awareness campaigns to continue its encouragement of an inclusive society comprised of many different cultures, religions and languages in order to try to counter increases in hate speech

and intolerance against minorities, including negative stereotyping of Roma, migrants and people of African descent.

79. The Special Rapporteur invites the Government to re-establish as part of the curriculum of public schools the citizenship and human rights course as one step in promoting an even more inclusive, tolerant society through education.

80. The Special Rapporteur recommends that the Government of Spain adopt a new national Roma integration strategy that includes more detailed measures, including steps for implementation, to avoid and reduce the concentration of Roma students in de facto segregated schools, as well as conduct a review to identify the establishments where such concentration is still occurring. He urges the Government to direct attention to improving the situation of non-Spanish Roma and strengthening measures to ensure that non-Spanish Roma can access public services without discrimination.

81. As part of a new national Roma integration strategy, the Government should include measures for better recognition of Roma cultures and identity, including with respect to teaching Roma history and providing more opportunities to study Roma languages in schools where in which Roma students are enrolled.

82. The Special Rapporteur strongly recommends that the Government collect, compile, analyse, publish and disseminate reliable statistical data, in full respect of the relevant data protection standards, disaggregated along ethnic, linguistic and religious lines on the basis of voluntary self-identification, in order to have reliable tools for the development of more effective policies and measures for the protection and promotion of the human rights of minorities.

83. The Special Rapporteur urges the Government to reinstate the collection of national data on the impact of different educational models, more precisely the collection by the evaluation institute of data on levels of competency in the acquisition of fluency in Castilian and co-official languages throughout the country, to assist in dispelling concerns about the impact of various educational models using different co-official and minority languages.

84. The Government should adopt legislative changes so that Spanish Sign Language and Catalan Sign Language are more clearly acknowledged as full-fledged languages. Spanish authorities should increase resources to expand the availability of bilingual educational facilities for deaf children and public services in both sign languages, and recognize both as official languages at the national level.

85. The Special Rapporteur invites the Government to modify article 231 of the organic law on the judiciary in order to guarantee a more directly exercisable right to use a minority co-official language jointly with Castilian so that the proceedings for criminal, civil and administrative judicial authorities can effectively be held in both co-official languages.

86. Spanish authorities should review any measure or practice that might reduce the proportion of teaching that is carried out in minority languages in public schools.

87. The Special Rapporteur recommends that Spanish authorities ensure that appropriate resources, teachers, support personnel and infrastructure are in place so that children in autonomous communities with significant populations belonging to linguistic minorities have the possibility of studying in their own languages.

88. Minorities have the right to freely and peacefully express their views on their position within the polity of Spain. The Government should, as a matter of priority, review the legal definition of the crime of sedition to guarantee that it does not unduly criminalize acts of peaceful civil disobedience, or impose disproportionate punishments for other actions related to the exercise by minorities of the rights to freedom of expression and freedom of peaceful assembly. In ongoing matters involving individuals who exercised their democratic rights to participation in public and political life, the Special Rapporteur urges the Government to comply with the principle of legality and certainty with regard to offences whose definition and

interpretation may contravene international human rights standards accepted by Spain.

89. The Special Rapporteur reiterates his satisfaction at the willingness of the Government to engage in dialogue, cooperation and action to address issues and improve practices and policies involving the human rights of minorities. He hopes his report will support the Government in that process and expresses his willingness and availability to assist in this important endeavour.
